

**Re CHEONG YUK SIM (f), ex parte,
CHEONG MOOK LIN.**

[O. C. J. (Thomson, J.) March 31, 1954]

[Ipoh — Bankruptcy Petition No. 67 of 1953]

*Bankruptcy — Federated Malay States & Colony
laws — Jurisdiction — Bankruptcy (Transitional Pro-
visions) Ordinance, 1946.*

A creditor who obtained judgment against the debtor and 2 others, sued out a joint bankruptcy notice against all the 3 judgment debtors. The debtor having failed to comply with the requirements of the bankruptcy notice, a bankruptcy petition was presented in the High Court at Ipoh. The debtor was resident and domiciled in Penang and did not carry on business either by herself or by an agent within any of the States comprised in the former Federated Malay States.

Held: (1) a joint bankruptcy notice is a good notice; (2) notwithstanding the creation of the Malayan Union and thereafter of the Federation of Malaya, the jurisdiction of the Supreme Court sitting in any of the States formerly comprised in the Federated Malay States is governed by the F.M.S. Bankruptcy Enactment and it cannot entertain proceedings against a person who is not a debtor within the meaning of the F.M.S. Enactment. The jurisdiction of the Supreme Court sitting in Penang and Malacca is similarly governed by the corresponding Bankruptcy Ordinance of the Colony of the Straits Settlements; (3) the Bankruptcy (Transitional Provisions) Ordinance 1946, has not in any way extended the jurisdiction of the Court.

Case referred to:—

(1) *In re Low* (1895) 1 Q.B. 734.**BANKRUPTCY PETITION.**

S. K. Das for the debtor.

M. S. Mahendran for the creditor.

Thomson, J.:—This case raises a question of some small importance relating to the present state of the Bankruptcy law in the Federation.

The facts are in no way in dispute. One Cheong Yuk Sim whom I shall call "the debtor" has, at all material times, been domiciled and resident in Penang. On 29th July, 1953, the petitioning creditor obtained judgment against her and two other persons to whom I shall refer as the "co-debtors" jointly for a sum of over \$8,000 and costs. One of the co-debtors at all material times was domiciled and resident in Kuala Lumpur and the other at all material times was domiciled and resident in Ipoh.

No part of the judgment debt was paid and on 14th September, 1953, a bankruptcy notice was issued at Ipoh and was addressed to the debtor and to each of the two co-debtors, all three names appearing on the face of the notice. A copy of this notice was served on the debtor at Penang without leave of the Court but though attempts were apparently made to do so it was not served on either of the two co-debtors. The debtor did not comply with the notice and in due

course a bankruptcy petition was presented against her, the act of bankruptcy relied on being her failure to comply with the bankruptcy notice.

That petition has now been withdrawn by leave of the Court, but counsel for the debtor has contended that she is entitled to her costs in connection with the withdrawal of the petition on the grounds:—

- (a) that the bankruptcy notice served on her was a joint bankruptcy notice and therefore bad;
- (b) that as the debtor was not a debtor within the meaning of Section 4(iii) of the Bankruptcy Enactment, the Court had no jurisdiction to make a receiving order against her; and
- (c) that the bankruptcy notice, having been served on her at Penang without leave of the Court, non-compliance with it could not constitute an act of bankruptcy.

With regard to the first of these points, I will only say that to my mind it is without substance. So long as a bankruptcy notice is in the proper form and sets out the required particulars correctly and is served on one of a number of joint judgment-debtors, I can see no grounds for questioning its validity simply because the names of the other joint judgment-debtors appear upon it. This view to my mind is supported by the case of *In re Low*⁽¹⁾ to which I was referred by counsel as some authority to the contrary.

In order to deal with the second point it is necessary to consider briefly the recent history of the law relating to bankruptcy in the Malay Peninsula and in Singapore.

I am not concerned here with the position in the former Unfederated States of Trengganu, Kelantan, Kedah and Perlis which apparently had no Bankruptcy Law before the war, or with the State of Johore which had its own Enactment. In the Federated Malay States, however, the law was contained in the Bankruptcy Enactment (Cap. 55).

Under that Enactment proceedings in bankruptcy can only be taken where there is an act of bankruptcy and an act of bankruptcy can only be committed by a "debtor" as defined by section 4(iii) of the Enactment which reads as follows:—

"(iii) The word "debtor" in this section shall be deemed to include any person

- (a) who is domiciled in any of the States; or
- (b) who within a year before the date of the presentation of the petition has ordinarily resided in or had a dwelling-house or place of business in any of the States; or
- (c) who though not himself personally within the States carries on business by an agent within the States."

For convenience I shall call such a debtor "an F.M.S. statutory debtor". That was the substantive law.

The Court having jurisdiction was the Supreme Court. Its jurisdiction, however, was to be exercised

in accordance with section 81(ii) which provided that a bankruptcy petition was to be presented in any State in which the debtor had resided or carried on business during the six months immediately preceding the presentation of the petition. In effect, the word "debtor" in that section must mean what I have called an F.M.S. statutory debtor because under the Enactment a petition could not be presented against any other sort of debtor. The two following sub-sections of section 81 went on to provide that nothing in the section was to invalidate a proceeding by reason of it being taken in the Court in the wrong State and gave the Judge in any State full discretion to retain the proceedings in that State or to transfer them to any other State within the Federated States.

In the former Straits Settlements the law was contained in the Bankruptcy Ordinance (Cap. 45) the provisions of which are, except on one or two points that do not affect the present argument, substantially the same, *mutatis mutandis*, as those of the F.M.S. Enactment. As under the F.M.S. Enactment bankruptcy proceedings can only be taken where there is an act of bankruptcy and an act of bankruptcy can only be committed by a debtor as defined in section 3(3) which reads as follows:—

"3(3) The word "debtor" in this section shall be deemed to include any person, whether a British subject or not,

- (a) who is domiciled in the Colony; or
- (b) who within a year before the date of the presentation of the petition has ordinarily resided in or had a dwelling-house or place of business in the Colony; or
- (c) who though not himself personally within the Colony carries on business by an agent within the Colony."

Such a person I shall call "a Colony statutory debtor". Section 86 contains provisions similar to those of section 81 of the F.M.S. Enactment relating to the particular Settlement in which bankruptcy petitions were to be presented and as to the consequences of presenting a petition in the wrong Settlement.

From the foregoing it is clear that both in the F.M.S. and the Colony the existence of the jurisdiction of the Court in bankruptcy depended on whether or not the debtor was an F.M.S. statutory debtor or a Colony statutory debtor as the case might be although it is to be observed that one and the same person at one and the same time might belong to both classes of statutory debtor and so be within the jurisdiction of both Courts, as, for example, in the case of a person domiciled in the Colony but having a place of business in the F.M.S. And it is perhaps unnecessary to add that in the F.M.S. or the Colony the only law which the Court had any power to apply was the local law.

With the creation of the Malayan Union the Settlements of Penang and Malacca ceased to form part of the Colony and became part of the Union as did the former Unfederated States. Under these new constitutional arrangements the question of the bankruptcy law was dealt with by the Bankruptcy (Transitional Provisions) Ordinance, 1946, (Malayan Union Ordinance No. 17 of 1946). I am not concerned here with the effect of that Ordinance in relation to the former Unfederated States but only with its effect in the former Federated Malay States and in the Settlements of Penang and Malacca.

Section 3(1) of that Ordinance reads as follows:—

Section 3(1) Except as otherwise provided in this Ordinance, the laws to be applied in Bankruptcy shall be:

- (a) in the Settlements, the existing laws of the Straits Settlements; and
- (b) in the Malay States, the existing laws of the Federated Malay States;

with such modifications as may be necessary to give effect to such laws."

Then comes section 4 which it is to be observed is very similar to section 81 of the F.M.S. Enactment and section 86 of the Colony Ordinance. Sub-section (1) provides that the Supreme Court shall be the Court having jurisdiction in bankruptcy. Sub-section (2) provides that bankruptcy petitions are to be presented to the Court in the Settlement or State in which the debtor has resided or carried on business for the longest period during the preceding six months. Sub-section (3) reads as follows:—

"(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Settlement or State."

Sub-section (4) gives the Court power to transfer proceedings from State to State, from Settlement to Settlement, or from State to Settlement or *vice versa*.

I pause here to observe that I can find nothing in this section which adds to or detracts from the jurisdiction of the Court in any way. Sub-section (1) says that the Supreme Court is to be the Court having jurisdiction but what that jurisdiction consists of is to be sought and found elsewhere. It is nowhere found within the four walls of the section. Sub-section (2) only says in what way in a particular respect the jurisdiction is to be exercised. In sub-section (3) the words "nothing in this section" make it clear that the sub-section only operates to save proceedings which are bad by reason of being in contravention of the preceding sub-section and not proceedings which are bad by reason of anything to be found outside the section. And sub-section (4) is clearly ancillary to the saving contained in sub-section (3).

Then comes section 5 which reads as follows:—

"5. The procedure and powers of the Court, under its jurisdiction in Bankruptcy shall:

- (a) in the Settlements be the same as under the existing laws of the Straits Settlements; and
- (b) in the Malay States be the same as under the existing laws of the Federated Malay States."

The disappearance of the Malayan Union and the creation of the Federation does not affect the statutory position in any material way and I would now proceed to summarise the present position in the former Federated Malay States as follows:—

This Court has jurisdiction throughout the Federation. In the former F.M.S., however, the law to be applied is the former F.M.S. Enactment (Cap. 55) subject to certain modifications which do not affect the argument, and in the former F.M.S. the procedure and powers of the Court are the same as under that Enactment. Similarly in the Settlements of Penang and Malacca the law to be applied is the former Colony Ordinance (Cap. 45) and the procedure and powers of the Court are the same as under that Ordinance. There is nothing in the F.M.S. Enactment which makes what I have called a Colony statutory debtor subject to it and there is nothing in it which gives the Court powers to entertain bankruptcy proceedings against such a debtor except of course in the case where he is also an F.M.S. statutory debtor. In the F.M.S. the Court only has jurisdiction, in the sense of power, in the case of an F.M.S. statutory debtor.

That position is not to my mind affected in any way by anything in section 4 of Malayan Union Ordinance No. 16 of 1946, for as I have pointed out that section only says which Court is to have jurisdiction and without saying what that jurisdiction is deals with the way in which it is to be exercised. It is true that sub-section enables proceedings to be transferred from a State to a Settlement or *vice versa*, but that provision as I have said is ancillary to the earlier provisions of the section and would seem only to apply in the case, the possibility of which has already been mentioned, where one and the same person is both an F.M.S. statutory debtor and a Colony statutory debtor. To rely on that sub-section alone to give the Court in the former F.M.S. jurisdiction in relation to a Colony statutory debtor as if he were an F.M.S. statutory debtor would be to disregard the preceding sub-sections of the same section and to give it a construction in flagrant contradiction of the express terms of section 3 and section 5.

In the present case it is admitted that the debtor is not an F.M.S. statutory debtor and it follows that

this Court sitting in Perak has no jurisdiction over her in bankruptcy.

That concludes the matter and it is not strictly necessary for me to deal with the question of service in Penang without leave of the Court. In case, however, the point should arise again I feel I should express my opinion that had the Notice not been itself for the reasons I have stated a nullity leave for service would probably not have been necessary by reason of sections 5(2) and 109 of the Courts Ordinance.

In the circumstances, there will be an order against the creditor for payment of the debtor's costs which I assess at \$100.

Solicitors for the judgment-debtor: *Das & Co.*

Solicitor for the judgment-creditor: *M. S. Mahendran.*

CHUNG GUAT HOOI (m.w.) v. G. H. GOH.

[A. C. J. (Spenser Wilkinson, J.) April 29, 1954]

[Penang — Rent Assessment Board Reference
No. 2 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(f) — Res judicata — Whether applicable to Rent Assessment Board orders — Discontinuance in earlier proceedings.

The applicant had applied to the Rent Assessment Board for leave to eject the respondent under section 13(1)(f) of the Control of Rent Ordinance, 1948. After filing of the defence by the respondent, the applicant filed a notice of discontinuance and the application was struck off. But over 6 months later she filed a fresh application on the same grounds and with the additional ground of alternative accommodation offered. The respondent pleaded the defence of *res judicata* under the provisions of O. 16, r. 3 of the Subordinate Courts Rules. On a reference to the High Court in a case stated by the President of the Board,—

Held: (1) the doctrine of *res judicata* cannot be invoked if the issue between the parties in the second proceedings is not substantially the same as that in the first proceedings. Proceedings before a Rent Assessment Board are quite different in essence from proceedings between parties before a Court. The Board makes no final determination of any question. It can only give permission to commence proceedings; (2) even assuming that the doctrine could be applied, there are few cases under the Control of Rent Ordinance in which the doctrine is applicable because the circumstances between landlord and tenant are constantly changing, particularly so under section 13(1)(f).

Cases referred to:—

- (1) *In re May* 28 Ch. D. 316.
- (2) *Teh Say Mooi v. Tan Chor Leng* (1950) M.L.J. 90.
- (3) *R. S. Mohamed Sultan v. Liak Jee Song* (1952) M.L.J. 171.
- (4) *Clarke v. Bradlaugh* 8 Q.B.D. 63.